

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:  
Konetski, David et al. §  
§ Confirmation No.: 7695  
Serial No. 09/771,095 §  
§ Group Art Unit: 2157  
Filed: January 26, 2001 §  
§ Examiner: Dalencourt, Yves  
For: SYSTEM AND METHOD FOR USING §  
RESOURCES OF A COMPUTER §  
SYSTEM IN CONJUNCTION WITH A §  
THIN MEDIA CLIENT §

**REPLY BRIEF IN RESPONSE TO 37 CFR §41.41**

Mail Stop Appeal Briefs – Patent  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

This Paper is submitted pursuant to 37 CFR §41.41 as a Reply Brief to the Examiner's Answer, mailed on November 26, 2008.

**Status of Claims** begins on page 2.

**Ground of Rejection to be Reviewed on Appeal** begins on page 3.

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**1. STATUS OF CLAIMS**

The status of the claims is as follows:

Claims 27, 29-46 and 48-52 are pending in the application and are rejected.

Claims 1-26, 28 and 47 are canceled.

Claims 27, 29-46 and 48-52 are being appealed.

**2. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL**

Claims 27, 29-46 and 48-52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Raley (U.S. Patent No. 7,073,199) (Raley hereinafter) in view of Platt (U.S. Patent No. 6,987,221) (Platt hereinafter).

### **3. BACKGROUND AND INTRODUCTION**

The rejections in this application are based on two references: (1) Raley (U.S. Patent No. 7,073,199) (Raley hereinafter) and (2) Platt (U.S. Patent No. 6,987,221) (Platt hereinafter).

In the Appeal Brief, Applicants argue that a *prima facie* case of obviousness is missing for the claimed subject matter as a whole because Raley and Platt fail to disclose each element of the claims or to suggest the missing elements. Specifically, it is argued that neither Raley nor Platt teach a thin media client, as recited in the pending claims and defined throughout the specification and figures of the pending application.

In response to the Applicant's argument, the Examiner argued in the Examiner's Answer that:

Regarding Appellant's argument (page 7, third paragraph), that Platt fails to teach "the thin media" comprising an input/output (I/O) device coupled to the personal computer. The Examiner respectfully disagrees with Applicant's assertion because Raley teaches having a "thin client" and Platt was cited for the idea of having an input/output (I/O) device coupled to the personal computer (see again col. 17, lines 5-27). Platt further discloses that the systems and methods described herein can be utilized with a variety of suitable components (e.g., software and/or hardware) and devices and still be in accordance with the present invention. Suitable components and devices include MP3 players, DVD players, portable DVD players, CD players, portable players, electronic book devices, **personal digital assistants (PDA)**, computers, car stereos, **portable telephones** and the like. Thus, Platt does teach the "thin media client" as claimed (see col. 1, lines 12-23; col. 18, lines 14-23).

In response to Appellant's argument that it is clear that neither the computer 1512, nor the remote computer 1544 of Platt teach a thin media client, as recited in the pending claims and defined throughout the specification and figures of the pending application. The Examiner respectfully disagrees with Appellant's assertion because Platt does disclose personal digital assistants (PDA), portable telephones such as "thin client media" (see col. 1, lines 12-23; col. 18, lines 14-23).

Examiner's Answer mailed November 26, 2008, page 8.

#### 4. ARGUMENT

The Arguments provided in the Appeal Brief filed September 4, 2008 are not repeated here, but are maintained. In addition, it is argued below how the arguments of the Examiner's Answer fail to support a *prima facie* case of obviousness.

First, the arguments of the Examiner's Answer are contradictory as to what reference discloses a "thin client".

Lines 7-9 of the Examiner's Answer state "Raley teaches having a "thin client" and Platt was cited for the idea of having an input/output (I/O) device coupled to the personal computer (see again col. 17, lines 5-27). Then, lines 21-22 of the Examiner's answer state that "Platt does disclose personal digital assistants (PDA), portable telephones such as "thin client media" (see col. 1, lines 12-23; col. 18, lines 14-23)." Thus, it is unclear whether the Rejection relies on Raley or Platt for disclosing a "thin client". As such, the rejection is defective and should be reversed.

Second, in either case, it is still clear that neither Raley nor Platt teach a thin media client, as is recited in the pending claims and defined throughout the specification and figures of the pending application.

As found on page 3 of the pending application:

the term thin media client refers to a device that is configured to perform one or more functions using digital media content and is configured to leverage the processing, storage, and buffering capabilities of a computer system.

Page 3, lines 24-27. Emphasis added. In addition,

A principal advantage of this embodiment is that it allows a thin media client to use the resources of a computer system in a home network. The cost and complexity of the thin media client is reduced by having the computer system perform many of the processing and storage functions of the media client. In addition, resources of the computer system not normally found in a media client may enhance the features of the media client.

Page 2, lines 12-17. Emphasis added. In other words,

[t]he components of audio client 110, video client 120, and image client 130, particularly processors 112, 122, and 132 and memories 114, 124, and 134, respectively, are designed to provide these thin media clients with a minimal level of processing, storage, and buffering capability. The bulk of the processing, storage, and buffering needs of audio client 110, video client 120, and image client 130 are provided by computer system 100 as will be described in more detail below.

Page 4, lines 4-9. Emphasis added. Furthermore, the specification explains that

[t]he functions and operations of three example thin media clients, audio client 110, video client 120, and image client 130, will now be discussed. . . Audio client 110 is configured to play audio from digital media content. Processor 112, memory 114, and network device 116 provide audio client 110 with the ability to operate and communicate with computer system 100 to retrieve digital audio content. In audio client 110, device 118 may be any audio device such as speakers or headphones capable of producing audio and may be located externally or separate from audio client 110. . . Video client 120 is configured to play video from digital media content. Processor 122, memory 124, and network device 126 provide video client 120 with the ability to operate and communicate with computer system 100 to retrieve digital video content. In video client 120, device 118 may be any video device such as a display screen capable of displaying video and may be located externally or separate from video client 120. . . Image client 130 is configured to display images or graphics from digital media content. Processor 132, memory 134, and network device 136 provide image client 130 with the ability to operate and communicate with computer system 100 to retrieve digital image content. In image client 110, device 118 may be any image or graphics device such as a display screen capable of displaying images or graphics and may be located externally or separate from image client 130.

Page 7, line 15 – Page 9, line 17. Emphasis added to provide examples.

To the contrary, in regard to Platt, neither the rejection of the claims in the Final Office Action mailed April 14, 2008, nor the Examiner's Answer mailed November 26, 2008, teach enabling a person having ordinary skill in the art how to "leverage the processing, storage, and buffering capabilities of a computer system" or how to allow "[t]he bulk of the processing, storage, and buffering needs of [thin media clients, such as speakers, headphones, and/or display screens to be] provided by computer system 100", given that the devices provided in the cited portions of Platt are stand-alone type devices, such as MP3 players, DVD players, portable DVD players, CD players, portable CD players, video compact disk (VCD) players, super video compact disk (SVCD) players, electronic book devices, personal digital assistants (PDA), computers, car stereos, portable telephones and the like. Platt, column 18, lines 18-23. Therefore, it is clear that the devices of Platt are not equivalent to a thin media client, as is recited in the pending claims and defined throughout the specification and figures of the pending application.

In regard to Raley, the rejection has conceded on page 3 of the Office Action mailed April 14, 2008 that "Raley . . . fails to specifically teach that the thin media client comprises an input/output (I/O) device coupled to the personal computer." Emphasis added. However, as provided above above, the thin media client of the pending claims is configured to leverage the

processing, storage, and buffering capabilities of a computer system where the computer system may perform many of the processing and storage functions of the media client so that the bulk of the processing, storage, and buffering needs of thin media clients are provided by computer system. As should be understood by a person having ordinary skill in the art, given that the devices of Raley do not "teach that the thin media client comprises an input/output (I/O) device coupled to the personal computer" (as conceded by the rejection), then the devices of Raley clearly could not teach a thin media device that is configured to leverage the processing, storage, and buffering capabilities of a computer system where the computer system may perform many of the processing and storage functions of the media client so that the bulk of the processing, storage, and buffering needs of thin media clients are provided by computer system. In other words, the proposed combination in the rejection provides an inoperable and defective hypothetical device. As such, the rejection is defective for fabricating an inoperable combination to reject the claims. Therefore, the rejection of the claims should be reversed.

## **5. LEGAL PRECEDENT**

As the PTO recognizes in MPEP §2142:

The Examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. If the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness.

As discussed above, the USPTO clearly cannot establish a *prima facie* case of obviousness in connection with the amended claims for the following reasons.

35 U.S.C. §103(a) provides that:

[a] patent may not be obtained ... if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains ... (emphasis added)

Thus, when evaluating a claim for determining obviousness, all limitations of the claim must be evaluated. However, as discussed above, the references, alone, or in combination, do not teach the invention as a whole.

Therefore, it is impossible to render the subject matter of the claims as a whole obvious based on a single reference or any combination of the references, and the above explicit terms of the statute cannot be met. As a result, the USPTO's burden of factually supporting a *prima facie* case of obviousness clearly cannot be met with respect to the claims, and a rejection under 35 U.S.C. §103(a) is not applicable.

**6. CONCLUSION**

In view of the foregoing, it is respectfully submitted that the various combinations of references fail to teach or suggest the subject matter of claims 27, 29-46 and 48-52. For all of the foregoing reasons, it is respectfully submitted that claims 27, 29-46 and 48-52 be allowed and a prompt notice to that effect is earnestly solicited.

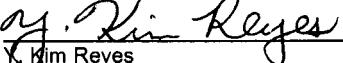
Respectfully submitted,

  
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**CERTIFICATE OF TRANSMISSION**

I hereby certify that this correspondence is being transmitted to the United States Patent and Trademark Office, via EFS-Web, on the date indicated below:

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